it is no longer in force. Article 167(2)(a), as I understand it, was concerned with the legal or constitutional position of Her Majesty and the Government of the State of Penang or Malacca, as the case may be, on or after Merdeka Day as regards rights to sue, liabilities to be sued or obligations arising from contract or otherwise. In terms so provided it is difficult to conceive how this provision can have anything to do with the applicants' right to their land. It was, I think, argued in somewhat general terms that the Indenture granted by the East India Company on behalf of the British Crown was binding on Her Majesty and on the Penang State Government. The suggestion was that the Indenture was a contract and that Her Majesty was under an implied obligation to ensure that the land shall not be subject to rent. Indian cases have been cited for the view that Crown grants are not binding on State legislatures. I do not find it necessary to consider those authorities as I am of the view that the Indenture in this case was not a contract for the purpose of Article 167(2)(a) of the Constitution. Suffice it for me to say that Parliament has wide powers to make laws which are not inconsistent with the Constitution. It has not been suggested that section 102 of the Code to the extent that it affects lands granted by the British Crown in the matter of rents is beyond the powers of Parliament to enact or inconsistent with Article 167 (2)(a). The learned Legal Adviser was perfectly right in saying that the said provision has no application whatsoever. I feel bound to say with respect to the learned judge who framed the first question that no question as to the effect of Article 167(2)(a) of the Constitution has arisen for the consideration of this court. The answer to this question, as it must be, is No.

Likewise I must say that no question as to the effect of Article 13(1) of the Constitution has arisen for the consideration of this court. The said Article clearly does not restrict legislative powers but merely declares unconstitutional or prohibits any illegal executive acts of depriving property. See commentary on this provision by *Sheridan and Groves* in "The Constitution of Malaysia" on page 44. The four orders named in the second question, particularly Pg. P.U. 39/69, do not have the effect of depriving any person of his property. Pg. P.U.39/69, for instance, does no more than what is permitted to be done by section 102(1) of the Code. If the applicants' right is affected by any of the said orders it is because Parliament has provided that it can be so affected. Article 13(1) of the Constitution does not restrict the legislative powers of Parliament.

The first three questions must, therefore, be answered in the negative and the fourth in the affirmative.

Accordingly, I would send this case back to the High Court with a direction that the motion be dismissed with costs. The applicants shall also pay the costs of the proceedings in this court.

As regards the procedure followed in this case it is sufficient to say that the Rules of the Supreme Court, 1957 govern all civil proceedings in the High Court. Order 1 rule 1 provides that all proceedings of a civil nature in the High Court shall be by way of action unless otherwise provided in the Rules or in any other written law. In terms of Order 72, the English practice could only be resorted to if there is no provision in our Rules or in any written law in force in the country to govern the present proceedings. I fail to see why the applicants should not have proceeded by way of action as was done in the case of *Oriental Holdings* v. *Government of the State of Penang & Government of Malaysia.*[1]

Azmi L.P. and **Raja Azlan Shah F.J.** concurred.

Questions answered.

Solicitors: *Lim Kean Siew & Co.*

LAU GEOK SWEE & CO. SDN. BHD. v. STATE COMMISSIONER, PENANG

[F.C. (Azmi L.P., Ali and Raja Azlan Shah F.JJ.) June 10, 1974]

[Penang — Federal Court Special Case No. 2 of 1973]

Land Law — Land held under Statutory Land Grant — Replacement title issued — Orders made for revision of rent payable — Whether contrary to the Federal Constitution — National Land Code, 1965, s. 102.

In this case the applicant applied by motion to have certain orders made under the National Land Code declared null and void. The case was referred to the Federal Court and was heard together with Federal Court Special Case No. 1 of 1973.[1]

Held: (1) in terms of section 102(3) of the National Land Code a direction under sub-section (1) of the section applies to any land notwithstanding any express provision in the document of title that rent reserved thereby shall not be capable of revision and therefore Pg. P.U. 39/69 or perhaps Pg. P.U. 4/70 applies to the land in question so that rent at a higher rate as prescribed in either of the said orders would become payable in respect thereof as from 1st January 1970;

(2) the land in question is land alienated before the commencement of the Code and not alienated land for the purpose of the Code;

(3) the answers to the four questions in this case are the same as in Special Case No. 1 and the case should be sent back to the High Court for the motion to be dismissed with costs.

Case referred to:-

(1) *Philip Hoalim Jr. & Anor.* v. *State Commissioner, Penang* [1974] 2 M.L.J. 100.

FEDERAL COURT.

Lim Kean Siew (*I. K. Cheah, W. A. Goh* and *Pamela Ong* with him) for the applicants.

Abu Talib bin Othman (State Legal Adviser, Penang) for the respondent.

Ali F.J.: This case having been referred to this court under section 48 of the Courts of Judicature Act, 1964 was heard together with Special Case No. 1 of 1973. It arose out of a motion by Lau Geok Swee & Co. Sdn. Bhd., whose land now held under a replacement title was originally granted by the British High Commissioner on behalf of the British Crown under a Statutory Land Grant No. 145 of 1955. In the said Grant the annual rent reserved until December 31, 1981 was $4.50.

In terms of section 102(3) of the National Land Code No. 56 of 1965, a direction under subsection (1) of the same section applies to any land notwithstanding any express provision in the document of title that rent thereby reserved shall not be capable of revision. Pg. P.U.39/69, or perhaps Pg. P.U.4/70, therefore, applies to the land in this case so that rent at a higher rate as prescribed in either of the said orders would become payable in respect thereof as from 1st January, 1970. For reasons stated in Special Case No. 1 the land in question is land alienated before the commencement of the Code and not alienated land for the purpose of the Code. Accordingly the answers to the four questions in this case are the same as in Special Case No. 1.

Likewise this case is also sent back to the High Court for the motion to be dismissed with costs.

Azmi L.P. and **Raja Azlan Shah F.J.** concurred.

Order accordingly.

Solicitors: *Lim Kean Siew & Co.*

DIRECTOR-GENERAL OF INLAND REVENUE v. C.K.K.

[F.C. (Suffian L.P., Lee Hun Hoe C.J. (Borneo) and Ong Hock Sim F.J.) June 12, 1974]
[Kuala Lumpur — Federal Court Civil Appeal No. 152 of 1973]

Income Tax — Purchase of land by company and other persons acting as syndicate — Intention to develop land — Application for conversion of land for building purposes refused — Sale of land at profit — Whether member of syndicate liable to pay income tax on share of profits — Income Tax Ordinance, 1947, s. 10(1).

Interpretation of Statutes — Amending legislation — Effect of on earlier legislation.

In this case the respondent together with a company, whose main activities were property development and housing, and certain other persons, had bought a large area of rubber land. An application was made for conversion of the land for building purposes but this was refused. Subsequently, the land was sold at a profit and the respondent obtained a share of the profits. The Director-General of Inland Revenue assessed him to tax on the profits but on appeal to the Special Commissioners, it was held that the respondent was not liable to tax on his share of the profits. An appeal to the High Court was dismissed. The Director-General of Inland Revenue appealed to the Federal Court.

Held, dismissing the appeal: the learned judge was right in holding that as this was an isolated transaction by the respondent, it did not constitute a trade of the respondent within the meaning of section 10(1)(a) of the Income Tax Ordinance, 1947, and therefore the profits arising therefrom was not subject to tax under the section.

Cases referred to:-

(1) *E.* v. *Comptroller-General of Inland Revenue* [1970] 2 M.L.J. 117, 125.

(2) *Edwards* v. *Bairstow* [1955] All E.R. 48, 52.

(3) *Cape Brandy Syndicate* v. *Inland Revenue Commissioners* [1921] 2 K.B. 403, 414.

(4) *Ormond Investment Co.* v. *Betts* [1928] A.C. 143, 157.

(5) *Martin* v. *Lowry* 11 T.C. 297.

(6) *California Copper Syndicate (Limited and Reduced)* v. *Harris* 5 T.C. 159.

(7) *Beynon* v. *Ogg* 7 T.C. 125.

(8) *Cape Brandy Syndicate* v. *Inland Revenue Commissioners* 12 T.C. 358.

(9) *Commissioner of Inland Revenue* v. *Fraser* 24 T.C. 498.

(10) *Orchard Park Ltd.* v. *Pogson* 42 T.C. 442.

(11) *Leeming* v. *Jones* 15 T.C. 333.

(12) *D.E.F.* v. *Comptroller of Income Tax* [1961] M.L.J. 55.

(13) *L. Investment Ltd.* v. *Comptroller of Inland Revenue* [1973] 2 M.L.J. 10.

(14) *D.R. Fraser & Co. Ltd.* v. *Minister of National Revenue* [1949] A.C. 24, 33.

(15) *Barry* v. *Cordy* [1946] 2 All E.R. 396, 398.

FEDERAL COURT.

Zulkifli bin Mohamood (Senior Federal Counsel) for the appellant.

S. Woodhull for the respondent.

In the High Court the following judgment was delivered on December 2, 1973:

Gill F.J.: This is an appeal by way of case stated from a decision of the Special Commissioners of Income Tax that the respondent is not liable to pay tax under section 10(1)(a) of the Income Tax Ordinance, 1947 on a profit which he made on the sale of his 1/20 undivided share in a piece of land.

The facts of the case are as follows. The respondent has been a licensed auctioneer and appraiser in Kuala Lumpur since 1941. He owns three pieces of rubber land which are 10 acres, 9 acres and 4 acres in area respectively, the first two jointly with his two brothers and the third by himself. The first land was bought on 29th November 1955 and the other two on 18th July 1956.

The respondent became a shareholder and director of Kumfort Limited which was incorporated on 4th November 1955. With its main trading activities being property development and housing, the company built many houses in Petaling Jaya. At a meeting of the Board of Directors on 16th July 1960, one Ting Chok, a major shareholder and a very active director, made it known that there was an offer for the sale of 44.809 acres of agricultural land under old rubber trees in the Mukim of Petaling which had prospects for housing development. The respondent together with certain directors of the company and some outsiders bought the land for $157,088.90 in August 1960. An undivided 10/20 share in the land was registered in the name of the company, an undivided 3/20 share in the name of Ting Chok, an undivided 1/20 share in the name of the respondent and the rest of the undivided shares in the names of seven outsiders.

At a Board meeting held on 17th November 1960 Ting Chok proposed that two further lots with an approximate area of 18 acres be acquired in order to obtain direct access to the property in question. At a further meeting of the Board on 30th November 1960 Ting Chok stated that an option to purchase the two lots valid until 31st December 1960 had been granted to him. However, no purchase was in fact made.